

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS

DEBRA ROTHENBERG,

Plaintiff,

- against -

THE MUSEUM OF FINE ARTS, HOUSTON

Defendant.

Docket No. 4:19-cv-3026

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff Debra Rothenberg (“Rothenberg” or “Plaintiff”) by and through her undersigned counsel, as and for her Complaint against Defendant The Museum of Fine Arts, Houston (“MFAH” or “Defendant”) hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of the World Trade Center on 9-11, owned and registered by Rothenberg, a professional photographer. Accordingly, Rothenberg seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

**JURISDICTION AND VENUE**

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. Upon information and belief, this Court has personal jurisdiction over Defendant because Defendant resides and transacts business in Texas and is registered with the Texas Department of State Division of Corporations.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

### **PARTIES**

5. Rothenberg is a professional photographer in the business of licensing her photographs to online and print media for a fee having a usual place of business at 550 Riverside Drive, #32, New York, New York 10027.

6. Upon information and belief, MFAH is a domestic business corporation organized and existing under the laws of the State of Texas, with a place of business at 1001 Bissonnet Street, Houston, Texas 77005. Upon information and belief, MFAH is registered with the Texas State Department of Corporations to do business in Texas. At all times material hereto, MFAH has owned and operated a website at the URL: [www.MFAH.org](http://www.MFAH.org) (the “Website”).

### **STATEMENT OF FACTS**

#### **A. Background and Plaintiff’s Ownership of the Photograph**

7. Rothenberg photographed the World Trade Center on 9-11 (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Rothenberg is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph was registered with United States Copyright Office and was given Copyright Registration Number VA 2-159-418.

#### **B. Defendant’s Infringing Activities**

10. MFAH ran the Photograph on the Website. an article on the Website entitled *In 1968, music saved Asbury Park*. See: <https://www.mfah.org/art/detail/79962>. A true and correct copy of the Photograph on the Website and a screenshot of the Photograph on the Website is attached hereto as Exhibit B.

11. MFAH did not license the Photograph from Plaintiff for its Website, nor did MFAH have Plaintiff's permission or consent to publish the Photograph on its Website.

**CLAIM FOR RELIEF**  
**(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)**  
**(17 U.S.C. §§ 106, 501)**

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. MFAH infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. MFAH is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by MFAH have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant MFAH be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded punitive damages for copyright infringement;
5. That Plaintiff be awarded attorney's fees and costs;
6. That Plaintiff be awarded pre-judgment interest; and
7. Such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York  
August 14, 2019

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